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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 520

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE TEXAS AND PACIFIC RAILWAY COMPANY, AND THE TEXAS AND PACIFIC MOTOR TRANSPORT COMPANY, *Appellants,*

v.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, AND THE PERMIAN BASIN RAILROAD COMPANY, *Appellees.*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

MOTION TO AFFIRM

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MOTION TO AFFIRM

Permian Basin Railroad Co., Intervenor-Appellee, pursuant to Rule 16(1)(c), revised Rules of the Supreme Court of the United States, moves that final judgment and decree of the District Court be affirmed on the grounds that the questions presented are so unsubstantial as not to need further argument.

This is a direct appeal from a final judgment entered May 17, 1968, and an amended order entered June 20, 1968, by a District Court of three judges specially constituted pursuant to 28 U.S.C., Section 17, approving the Commission's order and dissolving the temporary injunction entered November 6, 1967, and denying the application of the Atchison, Topeka and Santa Fe Railway Company, the Texas and Pacific Railway Company, and the Texas and Pacific Motor Transport Company to annul, enjoin and set aside the enforcement operation and execution of the order of the Interstate Commerce Commission dated March 21, 1967, and August 24, 1967, issued in I.C.C. Finance Docket No. 22475, *Permian Basin Railroad Co. Construction Between Odessa and Seagraves, Texas,* reported at 330 I.C.C. 256 (1967). The decision of the three-judge court was per curiam and as of now has not been reported, but is attached to Appendix 3 of Plaintiff-Appellants' brief.

In support of its motion to affirm, Appellee, Permian Basin Railroad Co., adopts as grounds for its motion those advanced in the motions filed, or to be filed by the United States of America and the Interstate Commerce Commission and in addition it urges the grounds hereinafter set forth.

QUESTIONS PRESENTED

The questions presented by the appeal, as set forth in the jurisdictional statement, are as follows:

1. Did the court below err in approving the Commission's unprecedented laissez faire doctrine, irrespective of the evidence that the proposed line will in all likelihood not be able to operate profitably?

2. Did the Commission fail to make its own determination of whether the proposed railroad should be constructed, and instead abandon that function to Permian Basin's incorporators?

3. Is there any substantial evidence to support the Commission's conclusion that Permian Basin's application should be granted?

4. Is the Commission's report so lacking in factual findings that the protestants have been deprived of their right to obtain meaningful judicial review of the Commission's decision?

However, the real question for the court is:

1. Does the appeal present a substantial question warranting this Court taking jurisdiction?

The collateral questions are:

1. Did the court below properly perform its primary function as a three-judge statutory court of determining whether there is substantial evidence on the record as a whole to support the findings of the Commission, and whether it (the Commission) has applied legal standards in the conduct of the proceedings before it in the conclusions which it (the Commission) reaches?[1] (See *Florida East Coast Railway Company* v. *United States*, 242 F. Supp. 490 (1965), affirmed per curiam, 382 U.S. 161; 86 S. Ct. 316; 15 L. Ed. 2d 228, November 22, 1965.)

[1] The application by the Commission of legal standards in the conduct of the proceedings before it have not been questioned by Appellants, and thus is not in question here.

2. Whether the court below found that the Commission's factual determination that the "present and future public convenience and necessity" requires the construction and operation by the Permian Basin Railroad Co. of a line of railroad in Ector, Andrews, and Gaines Counties, Texas, was based upon adequate findings supported by substantial evidence on the record as a whole.

STATEMENT

Permian Basin Railroad Co. (Permian Basin), a Texas corporation, filed application with the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity under Section 1(18)-(20) of the Interstate Commerce Act, 49 U.S.C. Section 1(18)-(20) permitting it to construct and operate a line of railroad between Odessa and Seagraves, Texas, connecting with the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) at Seagraves, Texas, and with the Texas and Pacific Railway Company (T&P) at Odessa, Texas, approximately 78 miles long.

The Permian Basin stated as reasons for its application:

(1) The large area to be traversed lacks direct rail service and thus increases costs and places shippers and receivers in a non-competitive position;

(2) Direct rail service is necessary to properly develop and use the area's natural resources, to provide jobs, housing, etc., for its share of our growing population;

(3) To permit the communities to make their contribution to vast scientific and technological advances being made;

(4) To assist in development of industry where natural resources are, which cannot be done without this railroad; and

(5) To preserve the area from possibly becoming a depressed area for lack of new industry and jobs. (Application, pp. 3-4)

The full administrative process was employed by the Interstate Commerce Commission, excluding oral argument, which was only requested by Applicant. This administrative process included:

(1) The application of Permian Basin;

(2) Protest by T&P only;

(3) Return to Questionnaire, as required by the Commission, requiring extensive information to justify the construction of the railroad;

(4) Thirty-five days of public hearings with 4,610 pages, 92 exhibits, 48 shipper-witnesses in support of the application, none against, plus 15 technical, professional and expert witnesses in support of the application;

(5) A 234-page brief by T&P, none by Santa Fe, and a 217-page brief by the Permian Basin;

(6) Trial Examiner's report;

(7) 239-page exceptions and brief by Permian Basin to Trial Examiner's report; 42-page reply of T&P to exceptions of applicant; none by Santa Fe;

(8) Report and Order of the Commission;

(9) 29-page petition of T&P for reconsideration of the Commission's report; none by Santa Fe;

(10) Order of the Commission denying reconsideration of the report and order dated August 24, 1967;

all of which consumed 4½ years from the filing of the application.

The Commission found that,

"The record shows a need for direct rail service in the Odessa-Seagraves corridor and that such service would foster further development of the tributary area."

and therefore found:

"That the present and future public convenience and necessity have been shown to require the construction and operation of the Permian Basin Railroad Co. of the line of railroad in Ector, Andrews and Gaines Counties, Texas, herein described. The application is granted."

The report of the Commission follows the usual form of such reports in compliance with the Administrative Procedure Act. The Commission in its report:

(1) Describes the Applicant, purpose of the application and statutory authority for applications;

(2) Describes other parties;

(3) Stated:

"The Applicant filed voluminous exceptions to statement of fact, conclusions and rulings in the examiner's report. We have reviewed the testimony and the numerous exhibits compiled in this extensive record and have fully considered the views of all parties."

(4) Set out organization of Applicant;

(5) Described the type of service proposed by Applicant;

(6) Described the area proposed to be served, lack of rail service, economy of the area, and highway system;

(7) Discussed the financial estimates of the line operations offered by Applicant and Protestants;

(8) Discussed arguments of Protestants relative to revenues to be derived by Permian Basin and their effect on existing carriers;

(9) Considered Protestants' estimate of first year of revenue operation and attached it as Appendix B;

(10) Discussed Trial Examiner's Report;

(11) Discussed iron ore traffic projected by Applicant and rejected same as too speculative;

(12) Discussed projected traffic and revenue on sugar beets, grain, metallic oilfield supplies, anhydrous ammonia, cotton, petroleum products (being only a part of the 40 commodities) as projected by Applicant and discounted by Protestants;

(13) Substantially modified Applicant's projection (Appendix A to Report) and Protestants' projections (Appendix B to Report) and made its own "reasonable" estimate as warranted by the evidence of record (this was found to be $600,000 or 2½ times smaller than projected by Applicant and 2½ times greater than projected by Protestants);

(14) Gave the basis of its estimates of revenue;

(15) Estimated the operating costs at $550,000;

(16) Estimated a profit of $50,000;

(17) Discussed its reasons for its findings and its final conclusions, including:

(a) unusualness of case;

(b) willingness of residents to assume risks;

(c) substantial reservoir of traffic;

(d) the size and prosperity of the area to be served;

(e) attraction of new industry, changing transportation patterns for various commodities;

(f) the attractive r ute of the proposed line;

(g) great advantages to shippers and receivers;

(h) the controlling precedent (*Construction of Line by Wenatchee Southern Ry. Co.,* 90 I.C.C. 237 (1924);

(i) the argument of Protestants for denial of application;

(j) belief that "the record shows a need for direct rail service in the Odessa-Seagraves corridor and that such service would foster further development of the tributary area."

(18) Made an ultimate finding:

"that the present and future public convenience and necessity have been shown to require the construction and operation by the Permian Basin Railroad Company of the line of railroad in Ector, Andrews and Gaines Counties, Texas herein described."

Though it became a reluctant party of record in opposition, the Santa Fe did not file a formal protest,

did not present any evidence or witnesses or interrogate any witnesses, filed no briefs with the Commission and did not present any oral argument to the court below.

The three-judge court had before it the full record before the I.C.C., including briefs. It received additional briefs and heard oral argument. Thereafter, it unanimously approved the order of the Commission.

ARGUMENT

I. LACK OF SUBSTANTIAL QUESTION

This Honorable Court should deny jurisdiction for lack of substantial question and should affirm the order below.

The three-judge court properly performed its statutory duty of review of the order of the I.C.C. With the full I.C.C. record of the hearing before it, and after receiving extensive briefs and hearing oral arguments, the court unanimously affirmed and approved the order of the Commission and dissolved the temporary injunction.

The court reviewed the Commission's findings regarding rail traffic, commodities to be transported, area and industries to be served, development potential, total revenue projections of $600,000, total operating costs projection of $550,000 and net revenue projection of $50,000. The court also reviewed the Commission's finding that there was a need for the proposed rail service and that protesting rail carriers would not be materially affected by a grant of the application. The court found that there was substantial evidence to support each of the Commission's findings.

The court spoke directly to Appellants' objections to the Commission's findings of profitability. The court

determined the Commission's findings of profitability were not vague as contended by Appellants, and that they were supported by subsidiary findings and had a rational basis in fact, of record.

After sustaining the Commission's findings of a net income from operations of the Permian Basin, the court held:

> "In addition, it should be noted that profitability is only one factor, albeit a major one, to be considered. The ultimate question is public convenience and necessity. The presence of a great need in the Permian Basin for the proposed railroad balanced against only a minimal threat of hardship to other carriers provides an adequate basis for the Commission's order, irrespective of profitability. *Construction of Line by Wenatchee Southern Ry. Co.,* 90 I.C.C. 237 (1924)."

This Court in *Universal Camera Corp.* v. *National L. R. Bd.,* 340 U.S. 474; 95 L. Ed. 2d 456, 469; 71 S. Ct. 456 (1951), stated:

> "Our power to review the correctness of application of the present standard [of what is substantial evidence] ought seldom to be called into action. Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals [in a three-judge district court in I.C.C. reviews]. This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied."

No such misapprehension or misapplication has been shown nor does it exist in this case.

The proposed railroad is to be 78 miles long through a vast mineral and newly developing agricultural area

not now served directly by rail. It will connect with two unrelated trunk line railroads operating thousands of miles of track. It will not parallel any other through rail service. This can hardly be said to constitute a substantial impediment or problem to the transportation system of the country.

The granting of the certificate of public convenience and necessity in this case is not in conflict with any act of Congress nor any policy of the Commission. This case does not involve the interpretation of a statute, nor a novel economic theory or the application of a novel economic theory. The construction of Permian Basin will not have a materially adverse effect upon connecting carriers that would prevent their continuing to serve the shipping public. The legality of the Commission's proceedings is not questioned. There can be no great impact upon the transportation system of the country from a granting of the certificate.

No substantial question has been raised warranting plenary review by this Honorable Court.

II. ARGUMENTS TO QUESTIONS PRESENTED BY APPELLANTS

The questions presented by Appellants are not substantial.

A

Appellants' Question I

The Commission's order did not embody an unprecedented doctrine in conflict with the Transportation Act of 1920. The Commission's order is valid, legally sufficient, and consistent with the Interstate Commerce Act, the legislative history and judicial interpretations of that law.

The Transportation Act of 1920 added Section 1(18, (20) to the Interstate Commerce Act, thereby giving to the Interstate Commerce Commission the responsibility to regulate the construction of railroads. In the case at bar, contrary to Appellants' assertions, the Commission has not proferred any new or unprecedented legal or economic theory conflicting with the Transportation Act of 1920. Since 1920 there has been a steady stream of applications for authority under Section 1(18) of the Interstate Commerce Act.[2]

In fact, the Interstate Commerce Commission has often granted certificates of public convenience and necessity under Section 1(18) because of requirements for economic development. The controlling precedent in this area was first expressed in 1924—some 44 years ago—in *Construction of Line by Wenatchee Southern Ry. Co., supra.*

This Honorable Court approved the Commission's expression of the principles in the *Wenatchee* case, *supra,* in *Chesapeake & O. R. Co.* v. *United States,* 283 U.S. 35; 51 S. Ct. 337; 75 L. Ed. 824 (1931). These principles are still valid and were properly applied by the Interstate Commerce Commission in the case at bar.

The Interstate Commerce Commission has long had the authority and has, when required by the public convenience and necessity, exercised its administrative discretion to approve railroads for the purposes of developing territories, industry, or cities, to foster agricultural production, to exploit timber and mineral re-

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[2] *Construction of Lines by American Niagara R.R.,* 82 I.C.C. 420; *Construction of Line by M. & S. V. R.R.,* 99 I.C.C. 606; *Construction by Ft. Worth & Denver South Plains Ry.,* 117 I.C.C. 233; *Levisa River R. Co. Construction,* 158 I.C.C. 210; *Northern Pac. Ry. Co. Construction, Mesa-Mattawa, Wash.,* 331 I.C.C. 71.

sources, and even to foster the development of sugar beets.[3]

The three-judge court below was apprised of the fact that the approach of the Interstate Commerce Commission in this case in determining whether the public convenience and necessity required construction of the Permian Basin Railroad Co. was not unprecedented and was not novel. In fact, the Interstate Commerce Commission approved a railroad construction application in a proceeding which is on all fours with the case at bar. In *Construction of Line by Chicago, R. I. & P. Ry. Co.*, 111 I.C.C. 137 and *Acquisition of Line by Chicago, R. I. & P. Ry. Co.*, 145 I.C.C. 489, a new rail line was authorized to traverse a rich new agricultural area through an extensive gas and oil field for the purpose of developing the areas involved and to afford the public necessary direct rail service in those areas. This is what the Permian Basin Railroad is to do and the I.C.C. and the three-judge court so found.

Appellants' argument concerning the legislative history of Section 1(18) is not pertinent. The constitu-

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[3] *Certificate to Union Pacific R.R.*, 65 I.C.C. 382 and *Construction of Lines by American Niagara R.R., supra; Construction and Operation of Los Angeles Junction Ry.*, 99 I.C.C. 287; *Construction of Line by St. L. B. & M. Ry.*, 90 I.C.C. 780; *Construction of Line by M. & S. V. R.R., supra; Construction by Atlantic & N. W. R.*, 145 I.C.C. 435; *Construction of Line by Nicholas, F. & G. R. Co.*, 145 I.C.C. 643; *Public Convenience Certificate to B. R. & P. Ry.*, 70 I.C.C. 1; *Public Convenience Certificate to Okla. & Ark. Ry.*, 70 I.C.C. 448; *Construction of Line by Quebec Extension Ry. Co.*, 99 I.C.C. 93; *Construction of Line by National Coal Ry. Co.*, 99 I.C.C. 569; *Construction of Line by Southern P. Co.*, 150 I.C.C. 516; *Construction by Texas-New Mexico Ry.*, 145 I.C.C. 211; *Levisa River R. Co. Construction, supra; Construction of Line by B. & I. Ry.*, 99 I.C.C. 711; *Public Convenience Certificate to A. T. & Ry. Co.*, 70 I.C.C. 198.

tionality and validity of Section 1(18) of the Interstate Commerce Act are not in question in the case at bar and have not been at issue in the lower court. The terms and language of Section 1(18) are not vague, ambiguous, nor unclear. Furthermore, the scope and application of the provisions of Section 1(18) are clearly delineated in the numerous statements of the Interstate Commerce Commission, the Federal courts and this Honorable Court. Appellants' primary thrust is to attempt to convince the Court that profitability is the entire key to the issuance of a certificate of public convenience and necessity. This is wrong. This argument is a factual, evidentiary argument contesting the weight ascribed to certain items of evidence, and as such is not within the purview of judicial review in the case at bar.

B

Appellants' Question II

Appellants' statement that the Interstate Commerce Commission did not discuss nor weigh the evidence as the Examiner did, but abandoned this function to Appellee flies in the face of reason. The Commission did not abrogate its statutory duty but, in fact, made its own decision on the merits of the application proceeding after fully considering and adequately discussing the voluminous evidence of record, analyses of conflicting evidence, and contradictory interpretations and positions. The Commission decided that the future and present public convenience and necessity required the proposed railroad—not the Appellees'.

The Commission's public report and order approving the proposed railroad specified what it ordered: issuance of a certificate to construct a railroad; stated its ultimate findings and conclusion: that public con-

venience and necessity required the proposed railroad; and set forth, at some length, its findings of fact which were the essential bases of its decision.

This Honorable Court is respectfully referred to the Statement portion of this Motion for a full recitation of the specific findings set forth in the comprehensive report and order issued by the Commission. It should be noted that not only did the Commission specifically comment upon the conflicting evidence of record, but specifically pointed out areas where its own conclusions drawn from the evidence were at variance with those of the parties. In other words, the Commission made a series of its own independent conclusions from the evidence of record, and set forth those conclusions and the underlying bases therefor in its report.

In short, the final report conclusively demonstrates that the Interstate Commerce Commission, in fact, fulfilled its statutory duty of determining the merits of the case and resolving the conflicting evidence presented in the proceeding. It is the Interstate Commerce Commission's function to draw such reasonable conclusions from its findings as in its discretion are appropriate, and this the Commission did in a proper, reasonable and rational manner.

C

Appellants' Question III

The Commission's decision is supported by substantial evidence. Appellants aver that because the Commission drew a conclusion contrary to one expressed by the Hearing Examiner, the opinion of the Commission was not supported by substantial evidence.

The Examiner's report was only a recommendation to the Commission—it was not administratively final,

nor a conclusive and binding finding—and no party has contended otherwise. It is the Commission's duty to review the record, including the Examiner's report, and derive its own conclusions therefrom. The Commission is not bound by an Examiner's recommendation, and it is not error to refuse to adopt such a recommendation. The Commission in this case did consider the Examiner's report and commented on it in the Commission's own report and order. *F.C.C.* v. *Allentown Broadcasting Corp.*, 349 U.S. 358; 75 S. Ct. 855; 99 L. Ed. 1147 (1955); *Universal Camera Corp.* v. *National L. R. Bd., supra; Davis, Administration Law,* Vol. II, Sec. 10.04 (1958).

The facts of the case at bar do not support Appellants' assertions. This case has been in active litigation for more than 5 years. During this time more than 4,600 pages of testimony (subject to cross-examination), almost 100 exhibits, hundreds of pages of briefs, reports, exceptions, and motions have been compiled in the record of this proceeding. The Commission has gone through the record, has received and commented upon conflicting evidence, and there is simply no doubt that the Commission had substantial evidence, on the record as a whole, to support its finding that the public convenience and necessity required the proposed railroad.

The test of judicial review of the validity of a decision of the Commission is whether the action of the Commission is supported by substantial evidence on the record as a whole. *Illinois Cent. R. Co.* v. *Norfolk & Western R. Co.*, 385 U.S. 57; 87 S. Ct. 225; 17 L. Ed. 2d 162 (1966). This Honorable Court has stated substantial evidence is "enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclu-

sion sought to be drawn from it is one of fact for the jury." *Illinois Cent. R. Co.* v. *Norfolk & Western R. Co., supra; National Labor Rel. Bd.* v. *Columbian E. & S.*, 306 U.S. 292; 83 L. Ed. 660 (1939), and see *Consolo* v. *Federal Maritime Com.*, 383 U.S. 607, 86 S. Ct. 1018, 16 L. Ed. 2d 131 (1966).

The three-judge court carefully evaluated whether or not the Commission had before it substantial evidence on the record as a whole for its decision. A case of this nature is necessarily technical and extensive in scope, and it must be remembered that the substantial evidence requirement is not intended to negate the function of an administrative tribunal such as the Commission. *General Motors Corporation* v. *United States*, 207 F. Supp. 641 (1962), (E.D. Mich. S.D.), aff'd. 324 F. 2d 604 (1963) U.S.C.A. 6th Cir. The proceedings before the Commission are not in the nature of private litigation; and, as a guardian of the public interest, the Commission must necessarily have an outlook as comprehensive as the interest of the entire country.

In summary, the three-judge court properly found that the vast record which the Commission had before it met the substantial evidence test.

D

Appellants' Question IV

The Commission made adequate findings of fact as required by law.

The Commission is required only to make a written report stating its conclusions together with its decision and order. Where the Commission sufficiently discloses the essential basis of its judgment in its report, the courts will not set that judgment aside. The law re-

quires the Commission to set forth only the ultimate facts upon which its conclusions lie. *Alabama Great S. R. Co.* v. *United States*, 340 U.S. 216, 227 95 L. Ed. 225, (1951); *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515, 66 S. Ct. 687, 90 L. Ed. 821 (1946).

The Commission is not required by law to make a complete discussion as to the testimony nor arguments advanced in a proceeding, nor is it required to specify the weight given to each item of evidence or fact. *Interstate Commerce Commission* v. *City of Jersey City*, 322 U.S. 503, 512; 64 S. Ct. 1129, 88 L. Ed. 1420 (1944); *Interstate Com. Com.* v. *Union P. R. Co.*, 222 U.S. 541, 56 L. Ed. 308, (1912); *Luckenbach S. S. Co.* v. *United States*, 122 F. Supp. 824 (1954), aff'd. 347 U.S. 984, 98 L. Ed. 1120 (1954).

Furthermore, the Commission is not required to disclose the mental operations by which its decisions are reached. *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 56 S. Ct. 797, 80 L. Ed. 1209 (1936). This Court recognized long ago that the Commission is not and should not be required to annotate each of its findings on applications for a certificate of public convenience and necessity or the evidence supporting it. *United States* v. *Pierce Auto Freight Lines, supra,* and *Baltimore & O. R. Co.* v. *United States, supra.*

In essence, as long as the essential basis for a rational conclusion is found, considering the report as a whole, the findings of the Commission do not even have to be sharp and clear. *Pennsylvania R. Co.* v. *U. S.*, 323 U.S. 588, 593, 65 S. Ct. 543, 89 L. Ed. 478 (1945).

The cases cited by Appellants are primarily rate and merger decisions. These matters come under different statutes and sections of the Interstate Commerce Act than applications for construction of a line of railroad. The legal requirements, burdens of proof, and statutory

policies for rate and merger proceedings are entirely different and separate from the concept, criteria and application of Section 1(18) of the Act.

The public interest involved in a merger case is a different concept than public convenience and necessity under Section 1(18). This Court has taken cognizance of the particular criteria applicable under Section 1(18) and the case at bar should not be argued on theories which are not pertinent to Section 1(18).

III. APPELLANTS' APPENDIX 4

The Appellants have attempted in the three-judge court and in this Court to substitute their judgment of profitability for that of the Commission. They have also attempted to convey the impression that all shortline railroads are unprofitable and being abandoned.

Appellants, in their Appendix 4, pages 107-115, list "railroads abandoned—1942-1967," both shortline and branch lines. They conveniently omitted the abandonment of the Georgetown, Texas branch of the Missouri Pacific (MOPAC), the parent company of the T&P. The I.C.C. authorized abandonment by MOPAC by a report of the Commission dated January 14, 1959, Finance Docket No. 19809. In its application for abandonment (recited in the Report of the Commission) the MOPAC showed carloads, railway operating revenues and railway operating costs for the years 1952 through 1957 as follows:

Year	Carloads	Revenue accruing Georgetown Branch	Operating costs Georgetown Branch
1952	716	$5,029	$47,308
1953	421	4,576	44,795
1954	258	2,068	33,675
1955	394	3,707	33,292
1956	281	2,358	23,723
1957	171	1,844	18,294

On the same day MOPAC was authorized to abandon the Georgetown Branch a new unaffiliated company was authorized to buy and operate the abandoned railroad. The following tabulation was prepared from the annual reports of the Railroad Statistical Section of the Railroad Commission of Texas for the years shown. The tabulation shows the railway operating revenues accrued to the Georgetown Railroad, the railway operating expenses and the ratio of railway operating expenses to railway operating revenues:

Year	Revenue	Expenses	Ratio
4½ mos. of 1959	$ 54,541	$ 48,375	86.69 percent
1960	152,953	67,293	44.00 percent
1961	242,448	93,050	38.38 percent
1962	334,445	200,762	60.03 percent
1963	355,070	196,975	55.47 percent
1964	254,398	156,217	61.41 percent
1965	271,541	165,683	61.02 percent
1966	377,192	185,778	49.25 percent

Abandonments occur for various reasons such as depletion of forests, mines, etc. In the Georgetown case it obviously came about because of poor management and lack of service to the shipping public.

This indicates the need of independent operations of some railroads.

T&P, the real Appellant in this case, disclosed its real objections in the testimony of Vice President J. J. Finnegan and Mr. B. J. Reynolds of the T&P staff. Mr. Finnegan said T&P objected to the Permian Basin serving Odessa and that T&P wanted to be the only railroad in Odessa. (Tr. 3202). Mr. Reynolds testified to the effect T&P would not cooperate with the Permian Basin in furnishing schedules and service to the shipping public (TR 4526-4543).

CONCLUSION

Appellants have not presented any question so substantial as to require plenary consideration by this Court. Therefore, the order of the three-judge court should be summarily affirmed.

Respectfully submitted,

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